

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF APPLE VALLEY, MINNESOTA

These Comments are filed by the City of Apple Valley, Minnesota in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Apple Valley believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Apple Valley, Minnesota is a city with a population of approximately 45,000. The franchised cable provider is Charter Communications, and our community has been negotiating cable franchises since 1974.

Our Current Franchise

Our current franchise began on June 11, 1999 and expires on June 11, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City of Apple Valley in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to public access; one channel (or capacity) devoted to educational access; and two channels (or capacity) devoted to government access. All of our access channels

operate twenty-four hours a day, seven days a week. Each channel shows an average of eight hours of programming per day, and informational electronic bulletin board messages show during the remaining time.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

Charter Communications (Grantee) shall collect from Subscribers and quarterly pay to the City in support of PEG operations the full amount of revenues generated by a \$.25 per month, per Subscriber fee beginning upon the Effective Date of this Franchise. This fee may be separately itemized as a "PEG Fee" and passed through to Subscribers independent from rates regulated pursuant to FCC regulations. The City may require increases in the PEG Fee up to a limit of \$1.25 increased annually by the Consumer Price Index (CPI) or three percent (3%), whichever is less. The City may not increase the PEG Fee by more than twenty-five cents (\$.25) in any given year. The City shall notify Grantee of any such increase on or before September 30, assuming a January 1 implementation. Should Grantee change the date of any annual rate change from January 1, and so notify the City, then the City shall notify Grantee of any PEG increase at least ninety (90) days prior to the new Grantee rate change date. Such payment shall be separate from and in addition to the Franchise Fee.

Within forty-five (45) days of the effective date of this Franchise, Grantee shall pay City \$90,000.00 as a capital equipment grant. Grantee may recoup said grant by an addition of up to twenty-five cents (\$.25) to the PEG Fee. Such additional PEG Fee shall be retained by Grantee until such time as the capital grant above is recouped. Upon such recoupment, Grantee shall notify the City. The City shall have the option of leaving the recoupment addition as part of the PEG Fee on a going forward basis. Grantee shall pay this additional amount to the City in its regular PEG Fee payment to the City. In the year of recoupment, the City may not increase the PEG Fee an additional amount.

The capital equipment grant was recouped by the Grantee in 2004 and the City has since been receiving the full PEG Fee amount of fifty cents (\$.50). The City is allowed to use PEG Fee revenues for PEG operations by language in the Franchise Agreement that was mutually agreed to by the City and the Grantee.

Our franchise does not require the construction of an institutional network ("I-Net").

Our franchise contains the following requirements regarding emergency alerts:

In the case of any emergency or disaster, the Grantee shall upon request of the City, make available its facilities to the City during the period of emergency or disaster. The cable company is also required by law to comply with any and all federal, state, and county requirements regarding the issuance of emergency alerts. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

An example of when this function has been helpful is the following:

Alerting viewers to seek adequate shelter during severe weather conditions such as tornado or straight-line wind activity.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

Telephone Inquiries and Complaints.

- a. Availability Grantee will maintain an adequate number of local, toll-free

or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week so as to receive Subscriber complaints, requests, and inquiries. During normal business hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during normal business hours, and; (2) after normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Further, inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

- b. Telephone Answer Time and Busy Signals Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
1. Installation, Outage and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis: (1) Installations will be performed within seven (7) business days after an order has been placed; (2) Grantee will begin working on service interruptions promptly, in no event later than twenty-four (24) hours after the interruption becomes known, and Subscriber requests for repairs shall be performed within twenty-four (24) hours of the request unless conditions beyond the control of Grantee prevent such performance; (3) The “appointment window” alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer; (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; (5) If a representative of Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
2. Complaint and Other Service Records Subject to Grantee’s to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide the City with a written summary of such complaints and their resolution on a quarterly basis. Grantee will also provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards herein in a form mutually agreed upon.

- 3 Billing and Subscriber Communications. Grantee must give Subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions. Bills must be clear, concise, and understandable, with itemization of all charges for Services, equipment charges, and any optional services, charges, and other activity during the billing period. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- 4 Subscriber Contracts. Grantee shall file with the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours.
- 5 Refunds and Credits. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated. If Service is interrupted or discontinued for a total of more than 48 hours in any 30 day period, Subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits for will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- 6 Late Fees. Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service and in no event less than one (1) month after the unpaid bill in question was sent to the Subscriber customer service center and bill payment locations will be open at least during normal business hours. Payments at the cable operator's drop-box location shall be deemed received on the date such payments are picked up by the cable operator which shall occur within 24 hours after every due date. The cable operators shall continue to provide a "grace period" of at least five (5) days after each due date. Late fees shall not exceed the Grantee's actual and demonstrable costs associated with collection of late payments as may be determined by a court of competent jurisdiction.
- 7 Drop Box. Grantee shall maintain a local drop box for receiving Subscriber payments after hours.
- 8 Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address Subscriber concerns or complaints in accordance with law.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

This Franchise is granted for the corporate boundaries of the City as it exists from time to time. In the event of annexation by City or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided, however, that Grantee shall not be required to extend Service beyond its present System boundaries unless there is a minimum of thirty (30) homes per cable mile. Grantee shall extend Service to any other areas or Persons requesting Service at a cost equal to the construction costs, including material, labor and any necessary easements, per mile multiplied by a fraction whose numerator equals the actual number of homes per mile, and whose denominator equals thirty (30) homes. Those Persons wishing to become Subscribers and requesting Service will bear the remainder of the construction costs on a pro rata basis. The Grantee may require that the payment of these costs by such potential Subscribers be made in advance.

Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event not to exceed twelve (12) months from notice thereof by City to Grantee.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

SYSTEM UPGRADE OVERVIEW

System Capacity

The upgraded HFC (hybrid fiber/coax) network required pursuant to Section 4.1 of the Agreement will be designed to operate with a bandwidth of 5 MHz to 750 MHz, with 50 MHz to 550 MHz being allocated for video services. The remaining upper 200 MHz of bandwidth will be reserved for compressed digital signals.

The network will have return capability utilizing spectrums from 5 MHz to 40 MHz and will be activated on both the coaxial and optical systems. The return system can be used to transmit both data and video, and will have the capacity to be used for insertion of locally-originated programming consistent with Exhibit E2, monitoring of certain key components in the network, and transmission of data from set-top terminals used for pay-per-view and other customer services.

Fiber optic transmitters, cable, and optical receivers will be used to transport the signals from the origination site to at least one receiving location, or "node", in each community. There will be an average of 500 homes served from each node.

After each node is installed, the number of active electronics, or amplifiers, will be reduced to the minimum required to reach the limits of the community, while still maintaining measurable picture quality better than current FCC requirements. "Standby" power supplies will automatically provide battery power to the coaxial system for several hours in the event of a commercial power interruption. The batteries will be automatically recharged after power is restored.

Customers will have the option of an "addressable" set-top terminal to access programming carried on the network. Through the set-top terminal the customer can purchase special programming, such as "pay-per-view".

Fiber Optics and Coaxial Plant in the Network

The optical transmission system is the backbone of the new network. At the origination site, all programming to be carried on the system will be converted to optical signals, and transmitted out into the system by a network of fiber optic cables.

The optical network will provide six (6) individual fibers to each node location. Each node will serve an average of 500 homes via coaxial cable.

The coaxial portion of the plant will begin at the node itself, where signals will be distributed over a short coax network, consisting of network amplifiers. The amplifiers are designed to accommodate return transmission capability, surge protection, and remote monitoring capability.

The Upgrade Process

The first step will be to install the fiber optic network alongside the existing coaxial system. In areas where the cables are already carried on utility poles, the new fiber will be attached to the existing cables. In areas where existing cables are underground, additional construction will be required to install the new fiber optic cables. Any new coaxial cable required by the network design, in the path of the fiber optic cable, will be installed at the same time.

When testing of the optical network is complete, then the second phase, upgrading of the coaxial plant, will begin.

When the coaxial plant is upgraded, each existing amplifier and distribution device will be removed and replaced with a new 750 MHz device. The new equipment will be activated and any customers served from that equipment will be switched to the new equipment. This process begins at the node, branching out through each leg of the coaxial plant. It is this portion of the upgrade that causes several brief interruptions in service. As the upgrade crews move further out into the coaxial system, fewer and fewer customers will experience interruptions in service. When the upgrade of a node is finally complete, all customers served from the node are now receiving service from the new network.

After the primary upgrade of each node is complete, installation upgrade crews will sweep through the same area inspecting each of the service lines that connect customers= homes to the distribution system. Connections will be checked, updated splitting equipment will be installed, if necessary, and in some cases, the entire line will be replaced. At this point, the upgrade of that node will be complete and work will move on to the next node area.

Charter Communications has upgraded their system within the last ten years. Digital and High Definition television signals, and cable modem service are currently available to all customers on their system.

Our franchise has a provision which requires the cable company to comply with all applicable laws, resolutions, and ordinances. A "Level Playing Field" is required under Minnesota Statute 238.08 which states:

No municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable communications system holding a franchise for the area.

Our franchise contains the following insurance requirements:

Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcasters/cablecasters liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, the City officers, elected officials, boards, commissions, agents and employees.

The policies of insurance shall be in the sum of not less than One Million Dollars

(\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars

(\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, One Million Dollars (\$1,000,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.

Our franchise contains the following bonding requirements: furnishing a Performance Bond in the amount of \$100,000.00 and a Letter of Credit in the amount of \$10,000.00.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. As with any private utility, in the event that the cable company proposes to perform any work within the City right of way, a right of way permit is required. The applicant is responsible for completing the application form as well as providing drawings indicating the type and extent of work to be performed. The appropriate fees must accompany the application. The application is reviewed by City staff to ensure the proposed work meets all City standards and guidelines. Upon approval, the cable company receives notice to move forward with their operation taking into account any comments provided by City staff. During the construction activity, City staff performs intermittent inspection of the work being performed. In addition, a final inspection is performed to ensure the contractor has completed all work to City standards.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: the right to inspect all construction or installation work; audit all amounts paid to the City; to inspect any records maintained by Grantee which relate to this Franchise or System operations including specifically Grantees accounting and financial records; require periodic evaluations; the Letter of Credit that provides funds to be paid to the City for penalties charged in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise; any other enforcement powers granted under law, resolution, or ordinance.

The Franchising Process

The cable system serving our community also serves many adjoining communities: Farmington, Rosemount, Lakeville, and southern Dakota County. In 1999 our community worked together with Farmington and Rosemount to issue a cable franchise for the Charter Communications cable company. This allowed the company to quickly obtain franchises in

these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Grantee and the City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section C2-7(f) or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws, provided, however, nothing herein shall restrict the City's exercise of its police powers.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance:

Notification, response time criteria, and Public Hearings for provision violations, transfer, sale or revocation of the cable franchise, billing changes and subscriber complaints, franchise performance evaluations, etc. State law also details criteria for such things as notification for franchise applications.

Competitive Cable Systems

Our community:

- received a competitive franchise application once in 2000, but the applicant did not complete the process.
- has recently been approached by a regional telephone company to provide service, but claimed that they were not subject to franchising requirements and chose not to pursue the matter further. They have since begun offering subscription video services in partnership with a satellite dish provider.
- has not denied any provider the opportunity to serve in our community.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

The City received an application for a competitive cable franchise in August, 2000, and the applicant initially indicated that they were willing to negotiate a franchise agreement that was

essentially the same as that held by the incumbent cable provider. However, by November of 2000, the applicant was unwilling to provide all of the financial information being requested by the City's consultant, and objected to PEG Access funding provisions that were similar to those in the existing incumbent provider's franchise agreement. They requested that their application be put on hold at that time, and withdrew it soon after.

The telephone company contacted the City twice about providing cable television service, but claimed to be exempt from franchising because they were using Voice over Internet Protocol (VoIP) to transmit video signals on their lines. The City's position was that the definition of cable service under state law did not exempt the use of VoIP technology from the requirements of franchising. They have since begun offering subscription video services in partnership with a satellite dish provider.

Conclusions

The local cable franchising process functions well in Apple Valley, Minnesota. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

The City of Apple Valley believes that the benefits of competition and technology in cable television services should be available to as many of our residents and businesses as possible, and that the local franchise process is the best way to ensure that.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

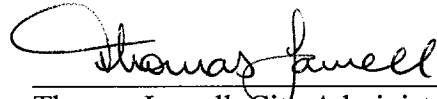
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Apple Valley therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

CITY OF APPLE VALLEY

A handwritten signature in black ink, appearing to read "Thomas Lawell", written over a horizontal line.

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